Re REGINALD W. GOFF, Q.C.

[O.C.J. (Thomson C.J.) April 4, 1962]

[K.L. — Petition for Admission No. 6 of 1962]

Advocate and Solicitor — Admission — Application by Q.C. — Appearance on single occasion in a single case — Application to shorten period of notice and period of instruction — Public interest — Advocates and Solicitors Ordinance, 1947, ss.5(5), 7, 8 — Whether ss.7 and 8 have been complied with.

This was an application by an eminent Queen's Counsel for admission to the Federation Bar to appear on a single occasion and in a single case. The applicant moved the court for (1) a shortening of the period of notice, (2) to dispense with the period of instruction which an applicant is normally required to undergo in Chambers of a petitioner and (3) to admit the applicant as an advocate and solicitor of the Federation of Malaya.

Held: as the applicant had not complied with the mandatory provisions of sections 7 and 8 of the Ordinance the application should be refused.

Observations on public interest.

APPLICATION FOR ADMISSION.

Robert K. C. Hoh for the petitioner.

Raja Abdul Aziz (Federal Counsel) for the Attorney-General.

Morris Edgar for the Bar Council.

L. P. Thean for the local Bar Committee.

Thomson C.J. (delivering oral judgment): This is an application for admission as an advocate and solicitor under the Advocates and Solicitors Ordinance. It is made by a very eminent Queen's Counsel and it is admittedly made for the purpose of coming to this country on a single occasion to appear in a single case. As such I think it is to be noted that it is the first occasion since the setting up of a judicial system of the modern type in this country that it has been thought either necessary or desirable to make any such application. I am, of course, aware that such applications though not perhaps frequent have been made from time to time in the former Straits Settlements and then Singapore but this is the first occasion in the history of this country that such an application has been made.

In it I am asked three things. In the first place I am asked to shorten, as I have the discretion to do, the statutory period during which notices must be posted. In the second place I am asked to exercise my discretion under section 5(5) of the Ordinance and dispense with the period of instruction which an applicant is normally required to undergo in the chambers of a practitioner. And in the third place I am asked to admit the applicant as an advocate and solicitor here and now.

The grounds on which I am asked to exercise my discretion under the first two limbs of the application are briefly that the petitioner is a person of very great professional experience, as is indeed conceded, that he has a specialist knowledge of company law (that is based on the fact that he practises in the chancery division and company matters are generally dealt with in that division), and that practical difficulties make it difficult for him to bring his physical person into the country at this stage.

Now the matter raises two sets of difficult questions.

In the first place there are questions of public interest. There is here a young rising legal profession and it may well be in the public interest that that profession should enjoy a certain measure of protection from competition from outside. Let there be no mistake as to what I mean. For myself I would not countenance for a moment, unless compelled to do so by the strongest statutory requirement, any attempt to protect the local profession simply and solely for the benefit of its members. That would be wrong in itself and it would be contrary to the intention of the statute which is clearly to be construed with an eye to one thing and one thing only and that is public interest. The point, however, is whether it is not in the public interest, as distinct from the individual interests of practitioners, that the profession should enjoy a certain measure of protection.

Again it would appear that as between the profession locally and the profession in England there is no reciprocity. If it is to be a traffic it must be altogether one way and the question arises whether that is altogether consistent with the status of an independent country. So much for the public interest. I would add that I would be faced with a certain amount of difficulty in considering the public interest aspect of the matter by reason of the somewhat uncommittal attitude of the Attorney-General.

Then there are certain difficult questions of law which arise. There seems to be some conflict between the earlier decisions on questions of remission of reading time as it concerns people who intend to practise permanently. There seems to be some conflict between the earlier local decisions, the Singapore decisions and a recent local decision. This raises questions of no small difficulty and had I to answer them in this case I should be compelled in the public interest to take time to consider what I was to say.

I think, however, that I am absolved from considering either the question of public interest or the difficulty of attempting to reconcile conflicting decisions for this reason. That is that there has been no attempt made to comply with the provisions of section 7 and section 8 of the Ordinance.

Section 8 provides for certain enquiries being made by the Bar Council. It also requires that the result of such enquiries shall be embodied in a confidential report to be forwarded to myself as Chief Justice. I have not received that report.

Again, section 7 says that every person applying to be admitted and enrolled shall before the hearing of his petition appear before a Board appointed by the Bar Council for the purpose of being examined on such matters as local law.

It goes on to provide for the conduct of the examination and for the presentation of a report.

The opening words of the section are clearly mandatory and peremptory and in my view they constitute a condition precedent which must be complied with before a petition can be heard. I have examined the Ordinance with very great care and I can discover no provision in it which enables me to exercise any discretion to dispense with that condition precedent. I appreciate that in the present case there would be very great difficulties facing the petitioner in complying with it. I appreciate that it is reasonable to suppose the petitioner would have no difficulty whatsoever in complying with the condition. But these considerations, to my mind, do not justify me in disregarding a condition precedent which is framed in mandatory and peremptory terms and to dispense with which the law gives me no discretion.

Judges are not here to make the law. They are not here to find faults in the law. They are here to administer and declare the law as it has been set out by the legislature. If, therefore, what I have said creates any difficulty it is a matter for the legislature to deal with. After all I am here to enforce the law. I am not here to set a bad example to the public by driving a coach and horses through it.

The petition is dismissed.

Petition dismissed.

LIM KOON EE v. MOHD. SAAD

[O.C.J. (Suffian J.) April 4, 1962]

[K.L. — Civil Suit No. 16 of 1961]

Practice and Procedure — Judgment reserved following trial — Application to amend defence before delivery of Judgment — Whether leave to amend should be given — R.S.C., 1957, O.28 rr.1 and 6.

Costs — Delayed application — Costs thrown away.

In a claim by a landlord for recovery of possession of premises comprised in a tenancy, the tenant alleged that the real nature of the transaction was that of money-lending. Following the trial, judgment was reserved by the Court. Before delivery of judgment the defendant applied for leave to amend his statement of defence by adding a counter-claim praying for the re-transfer of the land and house in question to him. The plaintiff objected on the ground that the counter-claim raised new issues which would involve re-opening the whole case and that in any event the application was made too late.

Held: the Court had a discretion under O.28 rr.1 and 6 to grant or refuse leave in such a case. To avoid a multiplicity of proceedings leave to amend the defence would be granted.

CIVIL APPEAL.

M. J. Mathew for the plaintiff.

T. S. Nathan for the defendant.

Cur. Adv. Vult.

Suffian J.: In this case the plaintiff claims possession of premises known as No. 3, Jalan Railway, Petaling Jaya, Kuala Lumpur, and arrears of rent and damages. She says that she is the registered owner of the land, the house on which it stands has been leased to the defendant at $120 a month with effect from 15th September, 1958, and in spite of repeated demands, the defendant has failed to pay the rent.

The defendant says that originally he was the registered owner of the land, but in September, 1958, he borrowed $4,000 from the plaintiff and the land was transferred to her as security; the $120 per month which he agreed to pay her was interest on the loan; the plaintiff was a licensed money-lender who has not complied with the provisions of the Moneylenders Ordinance, though he is prepared to pay the principal and interest thereon on re-transfer of the land to him; and he therefore asks that the suit be dismissed with costs.

The case was heard on 19th, 22nd and 23rd January, 1962, at the end of which I reserved judgment.

By summons in chambers dated 23rd February, 1962, that is before delivery of judgment, the defendant applied for leave to amend his statement of defence by adding thereto a counterclaim praying for the re-transfer of the land and house to him, and costs.

The plaintiff objects to this application because she says that the counterclaim raises new issues, if leave is granted, he is entitled to file a reply which involves reopening the whole case, and the application is made too late.

I have considered this matter with some care, and in the circumstances I feel that the justice of the case requires that I should exercise my discretion under Order 28, rule 1 and rule 6, in favour of the defendant.

The principal issue in this case is whether the land was transferred to the plaintiff as a result of an outright sale, as alleged by the plaintiff, or to secure a loan, as alleged by the defendant. If I find for the plaintiff, she would get her order and that would be the end of the matter. But if, in the absence of a counterclaim, I find for the defendant, that would not be the end of the matter, for it would still be necessary for him to come back to the court for an order that the plaintiff re-transfer the land to him. In order to avoid a multiplicity of proceedings, I grant leave to add the counterclaim. In my view this will not raise any new issues, but I shall of course allow the plaintiff to file a reply within 14 days, and also, at the continued hearing, if any, to recall any witnesses or to call fresh evidence.

As regards costs, because of the delay in making this application the plaintiff should be saved from any expenses which she ought not to bear and I accordingly order that the defendant should pay her the costs of this application, and all costs incurred by her and thrown away in consequence of the amendment hereby authorised. As regards costs of the continued hearing, if any, I shall have regard to the evidence called then before I make an order in respect thereof, for I shall have regard to their